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Victoria University
Press **Constitutional
Conversations**
Geoffrey Palmer
talks to Kim Hill on
National Radio
1994–2001

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Coalition culture: 1

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n perfected as an art form, the limited use in the new coalition of the most important points

elves to new heights right now. Members of the Labour Party argue you could argue that hatred

ce.

1996 election, there is a great and there are going to have to on you are going to have to each coalition party is going to going to go to which partner conduct and initiate those e no tradition of it. One of the the Alliance and the Labour he: On a political of view mon, and they have to work This is not an easy thing for tablished traditions of parties e had a coalition government; it was not a very successful urse caused problems at that life substantially. There is no who has had any experience ition government raises an than those with which our e to learn another political pon which to draw in this earning curve is steep. It is themselves. What they have m is "look, you have to com nces, but you are elected to ment a government you ave series of elections all ur positions out with each "

yatt Creech, I think it was, He says that other countries n have rules, written rules, nd of coalition government to the Governor-General.

Sir Geoffrey

I think a written constitution, which is entrenched as part of New Zealand's fundamental law, that cannot be altered by a simple majority in Parliament, is an idea whose time has come.

Kim Hill

You have said that for quite some time.

Sir Geoffrey

I have been saying it for several years now, and I think that there is greater support for it as people see that really a single vote in Parliament should not be capable of determining the vital issues about what are the rules of the game. If we did have an entrenched written constitution, we have the basis of what should be in it now. We have the Constitution Act 1986, we have the New Zealand Bill of Rights Act 1990, and we have the Treaty of Waitangi. If you put all those three things into an entrenched written constitution, none of them would be novel; all New Zealanders would know that they have been part of our system for a long time; at least you would have some of the rules beyond dispute and beyond easy alteration. I think that is pretty important. I expect that will occur some time in the next decade but, at the moment, what we have to learn is to somehow change the way in which negotiation and politics are conducted in New Zealand.

Kim Hill

Is it a step in the right direction then to have people suggesting that politicians should sign contracts so they will not defect to other parties? The ball and chain concept does not seem to be a step in the right direction towards conciliation and coalition.

Sir Geoffrey

Very hard to enforce from a practical point of view and from a legal point of view. Very difficult to say "thou shalt not act in accordance with your conscience". If someone in a Parliament is going to be forced to vote for something they do not believe in, sooner or later you will find that they will not do that. It is really from a practical point of view almost impossible. The rules of the Labour Party have attempted to get people to do this for years, but they do not always succeed. Mr Anderton did not follow them, and that is what led to the setting up of the Alliance. You can try and get people to vote within a caucus discipline, but you do not always succeed. One might argue that party discipline will be stronger under MMP. You could argue that.

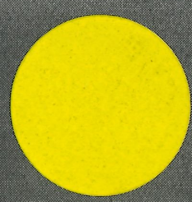
Kim Hill

You could? How?

Sir Geoffrey

Because some of the parties will be smaller, and if you do not get a place on that party list, you are not going to get in. The result is, therefore, that if you are de-selected, and not selected for that party, your place in Parliament will be lost. It is going to be much harder, I think, to win constituency seats than if you

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(Palmer, 2002: 11)

Preface

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The broadcasts have covered the New Zealand Bill of Rights Act 1990 and the position that occupies in the constitutional system and the difference that it has made. It does make a difference in the Parliament, but it makes a bigger difference in the courts. The courts have now made hundreds of decisions about the Bill of Rights Act that show it to be a significant change to the way people can have their rights upheld against the government. Eventually the Bill of Rights Act is a guardian against governmental power.

Then there has been the vexed position of the Treaty of Waitangi, a topic often discussed in these broadcasts over the years. There is still the debate going on about the nature of the commemoration of Waitangi Day and what it should be. But the place of the Treaty in our legal system is a much more fascinating and intricate question and there have been a number of broadcasts about that.

Looking at the whole system of government covered by the broadcasts over the nine years, it is easy to conclude that the New Zealand system of government is unique. It has characteristics not to be found anywhere else now and it is becoming less and less like the Westminster system upon which it is based. While the major difference is MMP, there are other differences.

We have no Upper House as most other countries do. We have no formal written Constitution as most other countries do. Furthermore, the differences between this country and Britain are becoming more pronounced every minute as the UK legal system becomes more deeply enmeshed into that of Europe.

Australia has a written Constitution that is difficult to amend. It sets up a system of federalism. The Americans have a similar system and so do the Canadians. The United Kingdom has a Constitution similar to ours in some senses. Theirs is based on essentially a common law constitution – the essential elements were defined by the historical constitutional struggles that took place centuries ago. It is not to be found in writing in the sense of being contained in a document called a constitution. New Zealand has the Constitution Act 1986. It sets out the basic elements of the three branches of government – Parliament, the Executive and the Courts. It is not entrenched in the sense that it can be changed relatively easily by Parliament. No referendum is needed.

I have thought for some years it would be better if New Zealand had a more distinct form of constitutional arrangement where the power distribution was clearly set out and could not easily be altered. That may improve the quality of our governance. It would improve the sense that the citizenry have about what the government can or cannot do to them. It should also include the Treaty of Waitangi and the New Zealand Bill of Rights Act. In my view it should be entrenched so that it cannot be altered except by referendum or a 75 percent majority of Parliament.

To secure such a constitution is an enormous undertaking. Constitutional change of any magnitude is always difficult. In a conference organised by the Institute of Policy Studies at the Victoria University of Wellington in 2000 the